

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and	)	
101 of the Commission's Rules to	)	WT Docket No. 03-66
Facilitate the Provision of Fixed and Mobile	)	RM-10586
Broadband Access, Educational and Other	)	
Advanced Services in the 2150-2162 and	)	
2500-2690 MHz Bands	)	
	)	
Amendment of Parts 21 and 74 to Enable	)	
Multipoint Distribution Service and the	)	MM Docket No. 97-217
Instructional Television Fixed Service	)	
to Engage In Fixed Two-Way	)	
Transmissions	)	

**To: The Commission**

**REPLY COMMENTS OF ADAMS TELCOM, INC., CENTRAL TEXAS  
COMMUNICATIONS, INC. & LEACO RURAL TELEPHONE COOPERATIVE, INC.**

Adams Telcom, Inc. ("Adams"), Central Texas Communications, Inc. ("Central Texas") and Leaco Rural Telephone Cooperative, Inc. ("Leaco") (collectively, the "Rural Commenters"), by their attorneys, hereby reply to comments submitted in response to the *Notice of Proposed Rulemaking*<sup>1</sup> in the above-captioned proceeding. As the diverse comments submitted in this proceeding make clear, the provision of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") in rural areas presents the Commission with unique challenges dissimilar from those faced by MDS and ITFS operators in medium and large-

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<sup>1</sup> *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 1250-2162 and 2500-2690 MHz Bands, Notice of Proposed Rulemaking*, WT Docket No. 03-66, (April 2, 2003) ("Notice").

sized metropolitan areas.<sup>2</sup> As providers of video and broadband services to customers in rural areas that would not otherwise have access to cable and over-the-air network programming, the Rural Commenters have proven, despite comments to the contrary,<sup>3</sup> that the use of this spectrum for high-powered video operations is not only efficient and financially viable, but also provides a critical lifeline by transmitting valuable news and weather information to customers living in underserved and unserved portions of the United States. Accordingly, the Rural Commenters echo the voices of the other rural companies that are participating in this proceeding by urging the Commission not to take any action that would negatively impact the transmission of important video programming and broadband services to rural and unserved communities and, when adopting new services rules, recognize the unique challenges facing rural MDS and ITFS operators.<sup>4</sup>

#### **I. Commenters Support Adoption of a Transition Plan That Adequately Protects Rural Operators**

The Rural Commenters agree with Teton's assertion that "if the Commission does not develop different rules for [band plan] implementation in rural areas, then it should, at a minimum, afford rural licensees who are providing valuable advanced communications service

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<sup>2</sup> See generally, Comments of Teton Wireless Television ("Teton"), National Telecommunications Cooperative Association ("NTCA") and The Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast ("Blooston").

<sup>3</sup> See e.g., Comments of Grand MMDS Alliance New York F/P Partnership at 2 stating "the use of [MDS and ITFS] spectrum, even partially, for video transmission over high-powered facilities in these bands is inefficient and not financially viable as a commercial enterprise."

<sup>4</sup> See generally, Comments of W.A.T.C.H. TV Company, stating that existing licensees providing "innovative and quality services" should not be penalized by the adoption of new rules in the 2.5 GHz band.

to the public today with the flexibility to forgo implementation of any spectrum changes until the demands of their markets require transition.”<sup>5</sup> Both Blooston and NTCA echo these sentiments in arguing that rural companies should be given the flexibility to transition to a new band plan adopted by the Commission when market forces dictate and when such companies are financially prepared to undertake such a transition.<sup>6</sup> NTCA’s suggestion that rural operators “be permitted to utilize their own band plan...and have the flexibility to convert their operations to a low-power cellular band plan when and if technology and market conditions make it possible to do so,” would provide the flexibility that rural carriers will need in their efforts to continue providing much-needed services to rural businesses, schools and residences.<sup>7</sup> The Rural Carriers support NTCA’s suggestion and urge the Commission to closely examine the factors impacting rural service providers when implementing a new band plan and requiring mandatory transition to such a plan.

By contrast, despite assertions made by the Wireless Communications Association International, National ITFS Association and the Catholic Television Network (collectively, “Coalition”) that adoption of the Coalition’s proposed transition plan would allow rural video operators to continue to operate using their existing band plan “for the foreseeable future,” the Rural Commenters, because they provide rural services within 110 miles of major market licensees and would not qualify for the proposed “5 percent MVPD opt-out,” would instead, be at immediate risk of being compelled to transition to a new band plan.<sup>8</sup> Instead of protecting rural carriers, the Rural Commenters agree with the Independent MMDS Licensee Coalition’s

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<sup>5</sup> See Teton Comments p. 9.

<sup>6</sup> See Blooston Comments p. 8, stating that “forced transitions should be minimized, and one way to do so is adopt a band plan that recognizes the differences in rural versus urban areas.”

<sup>7</sup> NTCA Comments p. 4.

<sup>8</sup> See Coalition Comments p. 37.

analysis that the Coalition’s proposed transition plan “puts in the hands of a single entity—sometimes not even an entity with a license in the affected market—the power to dictate to all other licensees how their operations should be structured.”<sup>9</sup>

The Commission has clearly demonstrated that issues affecting rural wireless service providers are significantly different than those affecting service providers in urban markets.<sup>10</sup> The FCC’s recently released *Notice of Proposed Rulemaking*, which seeks comment on proposals intended to promote rapid and efficient deployment of spectrum-based services in rural areas, is an ideal example of how the Commission sets rural services apart from those in more populated portions of the United States.<sup>11</sup> When considering transitioning existing rural video and broadband operators to a new regulatory regime, the Commission must continue to look at the unique factors that significantly impact rural service providers.<sup>12</sup> As such, the Rural Commenters reiterate their position and echo those stated by Teton and Blooston that if the Commission is unwilling to allow existing rural MDS and ITFS operators to opt-out of any newly-adopted band plan until those operators decide to transition on their own,<sup>13</sup> then the FCC

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<sup>9</sup> See Comments of Independent MMDS Licensee Coalition p. 14.

<sup>10</sup> See e.g., *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, *Notice of Proposed Rulemaking*, WT Docket No. 02-381, *rel.* October 6, 2003 (“*Rural NPRM*”), in which the Commission seeks comment on a number of proposed rule changes for rural wireless service providers, including allowing such providers to operate at higher power levels or access “unused” spectrum in underserved and unserved areas. See also, *In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Deployment of Secondary Markets*, *Report and Order and Further Notice of Proposed Rulemaking* (Oct. 6, 2003)(“*Secondary Markets Order*”).

<sup>11</sup> *Id.*

<sup>12</sup> See *Rural NPRM* at 7 stating that the Commission “recognizes that, as a result of various technical and demographic characteristics, the economics of providing service can be significantly different in rural areas as compared to urban areas.”

<sup>13</sup> The Rural Commenters propose that one “opt-out” option would be to allow rural licensees—licensees currently providing video or broadband services to more than ten paying customers within a Rural Service Area (or other definition of “rural” as adopted by the FCC in its ongoing

should implement its proposed three-phase transition process with mandatory conversion not required until 2012.<sup>14</sup> The Rural Commenters believe that the implementation of this three-phase transition process would likely never force rural operators, including the Rural Commenters, to migrate to a new low-power band plan and to forfeit their ability to provide high-power video services. As the Rural Commenters have clearly demonstrated throughout this proceeding, a mandatory or forced transition to a new band plan and regulatory regime will undoubtedly force rural video and broadband providers to terminate their existing MDS and ITFS services.<sup>15</sup>

## **II. Commenters Support Lifting ITFS Eligibility Restrictions**

The Rural Commenters support the significant number of commenters, including Sprint, Teton, Blooston, and NTCA, that urge the FCC to lift its ITFS eligibility restrictions.<sup>16</sup> Specifically, NTCA and Blooston both support lifting ITFS eligibility restrictions, so long as these commercial companies meet any “educational requirements”<sup>17</sup> and “comply with any rules adopted for the 2500-2690 MHz band.”<sup>18</sup> The Rural Commenters also agree with Sprint that the lifting of the ITFS eligibility restriction will not “forcibly divest [ITFS licensees] of any

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*Rural NPRM*) to have the option to opt-out of a new band plan and/or service rules until those rural operators find it appropriate to transition.

<sup>14</sup> See Rural Commenters Comments p. 4, Blooston Comments p. 8, NTCA Comments p. 4.

<sup>15</sup> See Rural Commenters Comments p. 7, Comments of Leaco Rural Telephone Cooperative, Inc., Central Texas Communications, Inc., and Adams Telcom, Inc., In the Matter of A Proposal for Revising the MDS and ITFS Regulatory Regime, DA 02-2732, stating that “the Coalition’s proposal, if adopted without modification...would likely sound the death knell for most rural wireless cable operators.”

<sup>16</sup> See e.g., comments of Sprint Corp (“Sprint”), Teton, Blooston and NTCA stating that the FCC should permit ITFS licensees, in their sole discretion, to assign or lease their licenses in whole or in part to commercial system operators.

<sup>17</sup> See NTCA Comments p. 4.

<sup>18</sup> See Blooston Comments p. 10.

spectrum,”<sup>19</sup> but rather will, as Teton notes, still “allow ITFS entities to retain their licenses, if they so choose.”<sup>20</sup>

Conversely, while the National ITFS Association and many of its member licensees have flooded the FCC with comments arguing that lifting the ITFS eligibility restrictions will likely “result in a *de facto* reallocation of this valuable spectrum resource from educational to commercial interests,”<sup>21</sup> these arguments largely ignore the stagnant state of ITFS in rural areas. However, even one of the most vocal ITFS supporters, the Illinois Institute of Technology (“IIT”), has implicitly recognized that differences in the application of ITFS exist in rural markets versus those applications in major markets. In its comments, IIT states that “the available evidence suggests—*particularly for large metropolitan areas*—that ITFS use is robust and that educational institutions have deployed these frequencies for their intended use (*emphasis added*).”<sup>22</sup> Accordingly, it is appropriate for the Commission to apply different eligibility criteria for rural ITFS licensees than urban ITFS licensees.

As the Rural Commenters stated in their September 8, 2003 comments, the vast majority of rural ITFS licensees are high schools and junior high schools that have neither the resources, the expertise, nor the desire to utilize their licenses without entering into wholesale leasing arrangements.<sup>23</sup> These leasing arrangements are characterized by minimal annual payments to ITFS licensees and bring enormous regulatory burdens upon commercial lessees to ensure that these high schools and junior high schools continue to retain *de facto* and *de jure* control over

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<sup>19</sup> See Sprint Comments p. 23.

<sup>20</sup> See Teton Comments p. 16.

<sup>21</sup> See Joint Comments of the Catholic Television Network and the National ITFS Association (“Joint ITFS Comments”) p. 5.

<sup>22</sup> See IIT Comments p. 9.

<sup>23</sup> See Rural Commenters Comments p. 7.

their licensed spectrum.<sup>24</sup> For the Rural Commenters and for other similarly situated rural ITFS lessees, this unusual lessee relationship has led to financial, administrative and regulatory inefficiencies—the exact inefficiencies the Commission is seeking to eliminate through the Spectrum Policy Task Force and the *Rural NPRM* and the *Secondary Markets Order* proceedings. Even if the FCC determines that “there are clear and compelling reasons not to permit market forces alone to dictate and control use of ITFS spectrum”<sup>25</sup> in major markets, the FCC should lift these restrictions in underserved and rural areas, where spectrum is extremely scarce.<sup>26</sup> The lifting of the ITFS eligibility restriction in rural areas is squarely in line with the FCC’s proposals and tentative conclusions contained in the *Rural NPRM* because it would help rural companies access important spectrum below 3 GHz without the enormous transactional costs associated with providing ITFS service.<sup>27</sup> Finally, should the Commission lift the ITFS eligibility restrictions but still require commercial licensees to provide educational services pursuant to existing ITFS rules, the Rural Commenters are prepared to continue to meet any ITFS educational requirements by continuing to provide educational services to accredited institutions within their MDS and ITFS service areas, and by making portions of these spectrum bands available for use by educational institutions, if those schools so desire.

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<sup>24</sup> *Id.*

<sup>25</sup> See Joint ITFS Comments p. 3.

<sup>26</sup> Another option the Commission could consider would be to allow rural operators to enter into more liberal leasing arrangements like those recently adopted in the *Secondary Markets Order*.

<sup>27</sup> In its *Rural NPRM*, the Commission stated that it recognizes “that the inherent economic challenges of providing telecommunications service in sparsely populated, expansive rural areas are of significant importance to any carrier that services or is considering serving these areas.” *Rural NPRM* at 5.

### III. Conclusion

The Rural Commenters reiterate and echo the comments submitted by other rural interests that the state of MDS and ITFS in rural areas is dramatically different from that in major metropolitan cities. Accordingly, the Rural Commenters urge the Commission to provide rural operators with sufficient flexibility from new service rules and a new band plan so that these operators may continue to provide video and broadband services to their existing customers without being forced to transition to a low-power band plan that will effectively end the provision of rural video services. Additionally, the Rural Commenters agree with other commenters, both large and small, who have filed comments in this proceeding urging the FCC to lift its ITFS eligibility restrictions. These restrictions no longer make sense in rural areas, and lifting such restrictions will in no way force existing ITFS licensees to sell their spectrum rights or vacate the band altogether.

Respectfully submitted,

By: /s/  
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October 23, 2003



## **CERTIFICATE OF SERVICE**

I, Colleen von Hollen, do hereby certify that on this 23rd day of October, 2003, I had copies delivered of the foregoing **REPLY COMMENTS of ADAMS TELCOM, INC., CENTRAL TEXAS COMMUNICATIONS, INC. and LEACO RURAL TELEPHONE COOPERATIVE, INC.,** via electronic mail to the following parties:

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